Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	MM Docket No. 00-39
Review of the Commission's	)	
Rules and Policies Affecting the	)	
Conversion to Digital Television	)	
	)	

To: The Commission

MSTV/NAB/ALTV OPPOSITION TO PETITIONS FOR RECONSIDERATION

The Association for Maximum Service Television, Inc. ("MSTV"), the National Association of Broadcasters ("NAB"), and the Association of Local Television Stations, Inc. ("ALTV")[1] oppose certain conclusions of the Consumer Electronics Association ("CEA") and Thomson Multimedia, Inc. ("Thomson") in their petitions for clarification and reconsideration[2] of the 2000 *DTV Biennial Review Order and Further Notice of Proposed Rulemaking*.[3]

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[1] MSTV represents nearly 400 local television stations on technical issues relating to analog and digital television services. NAB serves and represents the American broadcast industry as a nonprofit incorporated association of radio and television stations and broadcast networks. ALTV is a nonprofit trade association representing local television broadcasters across this country.

[2] Consumer Electronics Association, Petition for Clarification and Reconsideration, MM Docket 00-39 (filed March 15, 2001) ("CEA Petition"); Thomson Multimedia, Inc., Petition for Partial Reconsideration, MM Docket No. 00-39 (filed March 15, 2001) ("Thomson Petition"). Even though CEA's and Thomson's petitions concerning ACRA authority do not seek reconsideration of a decision in the *DTV Biennial Review Order*, MSTV, NAB, and ALTV respond to them here out of the same abundance of caution that led to their filing.

[3] Report and Order and Further Notice of Proposed Rulemaking, *In re Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MM Docket No. 00-39, FCC 01-24 (rel. Jan. 19, 2001) ("*DTV Biennial Review Order*" and "*DTV FNPRM*").

Specifically, MSTV, NAB, and ALTV oppose CEA's and Thomson's assertions that the All Channel Receiver Act ("ACRA"), codified as Section 303(s) of the Communications Act,[4] does not provide the Commission with authority to require that all new television sets capable of receiving any over-the-air broadcast signal be capable of receiving digital over-the-air broadcast signals. MSTV, NAB, and ALTV do, however, agree that the Commission should adopt the Program and System Information Protocol ("PSIP") in its entirety as CEA and Thomson propose.[5]

I. ACRA'S PLAIN LANGUAGE PLACES NO LIMITATION ON THE COMMISSION'S AUTHORITY TO ESTABLISH A DTV TUNER REQUIREMENT.

There is nothing remarkable or debatable about the Commission's conclusion that it has authority to "establish requirements for DTV receiver capabilities."[6] ACRA clearly provides the Commission authority to adopt a DTV tuner requirement, notwithstanding the arguments of CEA and Thomson. ACRA's language is plain and unambiguous: the Commission has the authority to require that any television set manufactured for sale in the United States capable of receiving over-the-air broadcast signals "be capable of adequately receiving *all frequencies allocated by the Commission* to television broadcasting."[7] Accordingly, the Commission is authorized to ensure that *all* frequencies are adequately received, whether they are UHF or VHF frequencies and whether they carry analog or digital

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[4] 47 U.S.C. § 303(s).

[5] *See* CEA Petition at 12-14; Thomson Petition at 1.

[6] *DTV FNPRM*, ¶ 110.

[7] 47 U.S.C. § 303(s) (emphasis added).

signals.[8] The Commission is entirely correct to conclude that "[w]hile Congress in 1962 did not anticipate the advent of digital television service, a plain language reading of this section does not limit our authority to analog television receivers, nor does it limit our authority to channels in the UHF band."[9]

CEA's and Thomson's arguments that "legislative history and other interpretational sources" limit ACRA's applicability are unpersuasive.[10] When the meaning of a statute is plain on its face, as with ACRA, there is no need to resort to its legislative history for interpretive guidance.[11] Moreover, it is unavailing to observe that Congress could not have contemplated digital television when enacting ACRA in 1962. If the plain language of a statute covers a situation, the statute is applicable, regardless of whether Congress specifically contemplated the situation in passing the statute.[12] By referring to "all frequencies," rather than

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[8] *See* Sixth Report and Order, MM Docket 87-268, 12 FCC Rcd 14588 (1997) (adopting, *inter alia*, procedures for assigning DTV frequencies) ("*Sixth R&O*"). In defining "frequency," the *Sixth R&O* made no distinction between frequencies for NTSC service and DTV service. *See id.*, ¶ 1 n.2 ("As used herein, the terms 'frequency' or 'channel' generally refers to the 6 MHz spectrum block currently used to provide a single NTSC television service or to the *equivalent* 6 MHz spectrum block to be used for DTV services.") (emphasis added).

[9] *DTV FNPRM*, ¶ 110.

[10] *See* CEA Recon Petition at 5-8; Thomson Recon Petition at 3-6.

[11] *See, e.g.*, *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 254 (1992) ("When the words of a statute are unambiguous, then the first canon is also the last: 'judicial inquiry is complete.'") (quoting *Rubin v. United States*, 449 U.S. 424, 430 (1981)); *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-43 (1998) (When statutory language is clear, a court and an agency "must give effect to the unambiguously expressed intent of Congress."); *TVA v. Hill*, 437 U.S. 153, 184 n.29 (1978) ("When confronted with a statute which is plain and unambiguous on its face, we ordinarily do not look to legislative history as a guide to its meaning."); *United States v. Oregon*, 366 U.S. 643, 648 (1961) ("Having concluded that the provisions of [the statute] are clear and unequivocal on their face, we find no need to resort to the legislative history of the Act.") (footnote omitted).

[12] *See National Org. for Women, Inc. v. Scheidler*, 510 U.S. 249, 260-62 (1991) (finding that even though Congress intended RICO Act to combat organized crime, statute's general language does not prohibit a RICO claim against anti-abortion activists); *Louisiana Public Serv. Comm'n* (continued...)

to "all UHF frequencies," Congress authorized the Commission to remedy more than the specific problem that gave rise to the legislation. Only by unreasonably contorting canons of statutory construction can it be argued otherwise.

II. ACRA'S LEGISLATIVE HISTORY SUPPORTS ITS APPLICATION TO THE DTV TRANSITION.

Even if one were to go beyond the plain words of ACRA and examine the legislative history, it is undeniably clear that the purpose for which Congress enacted ACRA – "maximum efficient utilization of the broadcast spectrum space"[13] – is equally applicable to the DTV transition. The very circumstances and factors that let Congress to enact ACRA mirror those that exist today: (1) this is a unique transition of the entire television system; (2) while prices for receivers may initially be higher, they will fall as production increases, and the requirement would protect longer-term consumer interests; and (3) any initial increase in receiver costs will be more than counterbalanced by benefits to consumers, including the ability to more quickly reclaim and reallocate analog spectrum.[14] Moreover, for the DTV transition to be completed on a fast track, as Congress desires, decisive Commission action is required just as decisive action was needed in 1962 to arrest the widespread failure of UHF stations. In short, as the Commission recognizes, "ACRA's legislative history suggests that Congress' reasoning in enacting the statute supports [the conclusion that ACRA provides authority for a DTV tuner requirement]."[15]

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v. FCC, 476 U.S. 355, 371-73 (1986) (finding that breadth of language in statutory provision precludes narrow reading of provision based on legislative history).

[13] S. Rep. No. 87-1526, 2d Sess. 2 (1962), *reprinted in* 1962 U.S.C.C.A.N. 1874.

[14] *See DTV FNPRM*, ¶ 105 (citing NAB and NABA comments).

[15] *Id.*, ¶ 110.

III. CEA AND THOMSON PROVIDE INAPPOSITE ARGUMENTS THAT ACRA SHOULD BE NARROWLY INTERPRETED.

A. The Commission's *Sanyo* Decisions Did Not Concern ACRA's "All Frequencies" Language.

CEA and Thomson claim that the Commission itself narrowly interpreted ACRA, specifically in its 1984 and 1985 decisions regarding a video display device that Sanyo sought to sell in the United States.[16] However, the *Sanyo* decisions centered on the question of whether Sanyo's device was "designed" to receive broadcast signals in the first place, not what is meant by receiving "all frequencies."[17] Once the Commission determined that the device, which could receive only channels 3 and 4 to receive the output of cable converters, was not a device designed to receive broadcast signals and, hence, not covered by ACRA, it dismissed as unnecessary Sanyo's request for a waiver of the all-channel receiver rules.[18] The Commission never considered what is meant by ACRA's grant of authority to ensure that television sets are "capable of adequately receiving all frequencies allocated by the Commission." Moreover, the Commission intended for its *Sanyo* ruling "to apply narrowly to the types of receiver in question here – a two channel receiver, marketed without an antenna and not intended to receive over-the-air broadcast signals."[19] Nothing in the *Sanyo* decisions supports the conclusion that ACRA does not broadly apply to television sets designed to receive broadcast signals. And finally, to the extent that the Commission commented on ACRA's purpose, it recognized that ACRA is *not*

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[16] *See* CEA Petition at 11; Thomson Petition at 6.

[17] *See* Memorandum Opinion and Order, *Sanyo Manufacturing Corp.*, 58 Rad. Reg. 2d (P&F) 719, ¶ 7 (1985) ("*Sanyo II*"); *see also Association of Maximum Service Telecasters v. FCC*, 853 F.2d 973, 976 (D.C. Cir. 1988) ("[T]he critical statutory language for our purposes is the phrase '[a device] *designed* to receive television pictures broadcast simultaneously with sound.'").

[18] *See Sanyo II, supra* (affirming Memorandum Opinion and Order, *Sanyo Manufacturing Corp.*, 56 Rad. Reg. 2d (P&F) 681, (1984) ("*Sanyo I*")).

narrow: "[I]t can be assumed that [ACRA] was intended both to *maximize the use of spectrum generally*, and more specifically, to promote a competitive environment between VHF and UHF television."[20]

B. The D.C. Circuit's Construction Of ACRA Does Not Narrow The Statute's Provision Of Authority For A DTV Tuner Requirement.

Both CEA and Thomson contend that the U.S. Court of Appeals for the District of Columbia Circuit ("D.C. Circuit") narrowly interpreted ACRA in *Electronic Industries Association Consumer Electronics Group v. FCC* ("*EIA/CEG*").[21] Again, CEA and Thomson seek support in inapposite authority. The court in *EIA/CEG* did extensively review ACRA's legislative history but for the purpose of determining how low a noise figure the Commission was authorized to set.[22] The court's inquiry centered on ACRA's authority to ensure that all channels are received "adequately."[23] The *EIA/CEG* decision merely held that ACRA does not allow the Commission to impose technology standards that are beyond state-of-the-art. The decision in no way limits the meaning of "all frequencies," and, moreover, no argument could be advanced that inclusion of DTV tuners is not technologically feasible.

C. No Further Specific Statutory Directive Is Needed For A DTV Tuner Requirement.

CEA and Thomson claim that because Congress legislated specifically to require closed-captioning display and V-chip inclusion, this somehow indicates that ACRA is too

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[19] *Sanyo I*, *supra*, at ¶ 9.

[20] *Id.* at ¶ 7 (emphasis added).

[21] *EIA/CEG*, 636 F.2d 689 (1980). *See* CEA Petition at 10; Thomson Petition at 7.

[22] *See EIA/CEG*, 636 F.2d at 694-96.

[23] *Id.*

narrow to provide the Commission with sufficient authority to adopt a DTV tuner requirement.[24] However, closed-captioning display[25] and V-chip functionality in televisions[26] have no relationship to adequate reception of all broadcast frequencies. They are issues that ACRA simply does not address and, thus, required specific legislation.[27]

Similarly, calls for a statutory DTV tuner requirement[28] should not be misconstrued as evidence that ACRA's authority is narrow. Such calls simply recognize that ACRA is permissive and that a statutory requirement would most quickly lead to implementation of a DTV tuner requirement, avoiding delays inherent in agency rulemaking.[29] Calls for congressional action in no way indicate that ACRA fails to provide authority.

IV. THE COMMISSION HAS NOT REVERSED ITS INTERPRETATION OF ACRA.

Both CEA and Thomson claim that the Commission has reversed its prior interpretations of ACRA and has done so without sufficient analysis. Their arguments are unpersuasive on both counts. First, the Commission has long recognized that ACRA provides authority to require both digital and analog reception in all television sets.[30] The only questions

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[24] *See* CEA Petition at 9; Thomson Petition at 7-8.

[25] *See* 47 U.S.C. § 303(u).

[26] *See* 47 U.S.C. § 303(x).

[27] Moreover, the closed-captioning and V-chip statutory provisions instruct the Commission to adopt requirements, while ACRA provides authority to establish requirements but does not mandate them. By the closed-captioning and V-chip provisions, Congress ensured that the requirements would be adopted.

[28] *See* CEA Petition at 11(citing, *inter alia*, former Chairman Kennard's request to Congress for a statutory DTV tuner requirement); Thomson Petition at 8 (same).

[29] *See* Comments of Paxson Communications Corporation, MM Docket No. 00-39, (filed Apr. 6, 2001) ("[I]t was PCC's recognition that manufacturers would resist advancing the DTV transition that caused it to seek to remove any doubt about the ACRA's applicability to DTV.").

[30] *See* Memorandum Opinion and Order/Third Report and Order/Third Further Notice of Proposed Rulemaking, MM Docket No. 87-268, 7 FCC Rcd 6924, 6930, 6984-85 (1992) (continued...)

have been whether and how the Commission should exercise its authority, not whether it has the authority in the first place.

Second, it is erroneous to argue that the Commission's finding that ACRA does not *mandate* dual-mode receivers is inconsistent with its conclusion that ACRA provides authority.[31] ACRA clearly is permissive rather than mandatory, and recognition of this difference in no way indicates a reversal of policy. There is, moreover, a difference between the debate over the extent of receiver performance thresholds permitted by ACRA and a consideration of ACRA's provision of authority for a DTV tuner requirement at all.[32]

Third, the Commission fully presents the arguments concerning ACRA's provision of authority for a DTV tuner requirement, despite Thomson's claim that the Commission reaches its conclusion "without a scintilla of supporting analysis."[33] The Commission devotes three paragraphs of the *DTV FNPRM* to presenting various arguments, including CEA's and Thomson's, before reaching its conclusion in a fourth paragraph.[34] Such analysis should be unnecessary when the Commission acts according to a plain statutory provision in a manner that is not inconsistent with prior policy, but the analysis is present nonetheless.

(seeking comment on whether Commission should exercise its authority under ACRA to require dual-mode receivers).

[31] *See* CEA Petition at 10-11 (citing *DTV Fifth Report and Order*, 12 FCC Rcd 12809, 12855-56 (1997)); Thomson Petition at 9 (same).

[32] Even though the extent to which the Commission should impose DTV receiver performance thresholds is a separate question, in declining to mandate them, the Commission significantly did *not* state that ACRA fails to provide authority to impose those thresholds. *See DTV Biennial Review Order*, ¶ 96.

[33] Thomson Petition at 9.

[34] *See DTV FNPRM*, ¶¶ 104-106, 110.

V. THE COMMISSION SHOULD ADOPT THE ATSC PSIP STANDARD IN FULL.

MSTV, NAB, and ALTV agree with CEA and Thomson that the Commission should reconsider its decision not to adopt the ATSC PSIP Standard, which is incorporated within the latest version of the ATSC Standard.[35] Poor PSIP transmission and reception (or its absence) negatively impact consumer satisfaction with DTV as much as poor receiver quality. Consumers do not know whether their new DTV sets fail to function adequately because of reception failure or PSIP problems. By adopting the PSIP standard in toto (which is most efficiently done by adopting the latest version of the ATSC DTV Standard in its entirety), the Commission would provide a uniform system for naming, numbering, and navigating television channels, which is increasingly important with multicasting. Moreover, CEA is correct to conclude that "[t]he Commission's generic reliance upon an 'industry approach' is misplaced because [ATSC PSIP Standard] A/65 is the industry approach."[36] Accordingly, the Commission should adopt the ATSC PSIP Standard in full.

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As MSTV, NAB, and ALTV have shown, all arguments that ACRA does not provide the Commission with authority to adopt a DTV tuner requirement ultimately fail to persuade. ACRA's language is unmistakably plain and broad. Moreover, while ACRA may not require the Commission to adopt particular all-channel receiver rules, that does not diminish its grant of authority to do so. Accordingly, MSTV, NAB, and ALTV urge the Commission to reject CEA's and Thomson's challenges to the Commission's determination that it has the authority to impose a DTV tuner requirement under ACRA. All agree, however, that the

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[35] *See* CEA Petition at 12-14 (citing *DTV Biennial Review Order* at ¶ 61); Thomson Petition at 1.

[36] CEA Petition at 14.

Commission should adopt the ATSC PSIP Standard in full in order to ensure uniform and effective channel identification and navigation.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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